

105TH CONGRESS
1ST SESSION

S. 4

To amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. ASHCROFT (for himself, Mrs. HUTCHISON, Mr. LOTT, Mr. NICKLES, Mr. CRAIG, Ms. COLLINS, Mr. DEWINE, Mr. ALLARD, Mr. BROWNBACK, Mr. CHAFEE, Mr. COATS, Mr. DOMENICI, Mr. ENZI, Mr. FAIRCLOTH, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, Mr. WARNER, Mr. COVERDELL, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, biweekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Friendly Work-
5 place Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to assist working people in the United
9 States;

10 (2) to balance the demands of workplaces with
11 the needs of families;

12 (3) to provide such assistance and balance such
13 demands by allowing employers to offer compen-
14 satory time off, which employees may voluntarily
15 elect to receive, and to establish biweekly work pro-
16 grams and flexible credit hour programs, in which
17 employees may voluntarily participate; and

18 (4) to give private sector employees the same
19 benefits of compensatory time off, biweekly work
20 schedules, and flexible credit hours as have been en-
21 joyed by Federal Government employees since 1978.

22 **SEC. 3. WORKPLACE FLEXIBILITY OPTIONS.**

23 (a) COMPENSATORY TIME OFF.—

1 (1) IN GENERAL.—Section 7 of the Fair Labor
 2 Standards Act of 1938 (29 U.S.C. 207) is amended
 3 by adding at the end the following:

4 “(r) COMPENSATORY TIME OFF FOR PRIVATE EM-
 5 PLOYEES.—

6 “(1) GENERAL RULE.—

7 “(A) COMPENSATORY TIME OFF.—An em-
 8 ployee may receive, in accordance with this sub-
 9 section and in lieu of monetary overtime com-
 10 pensation, compensatory time off at a rate not
 11 less than one and one-half hours for each hour
 12 of employment for which monetary overtime
 13 compensation is required by this section.

14 “(B) DEFINITION.—For purposes of this
 15 subsection, the term ‘employee’ does not include
 16 an employee of a public agency.

17 “(2) CONDITIONS.—An employer may provide
 18 compensatory time off to employees under para-
 19 graph (1)(A) only pursuant to the following:

20 “(A) Such time may be provided only in
 21 accordance with—

22 “(i) applicable provisions of a collec-
 23 tive bargaining agreement between the em-
 24 ployer and the representative of the em-
 25 ployees recognized as provided in section

1 9(a) of the National Labor Relations Act
2 (29 U.S.C. 159(a)); or

3 “(ii) in the case of employees who are
4 not represented by a labor organization
5 recognized as provided in section 9(a) of
6 the National Labor Relations Act, an
7 agreement or understanding arrived at be-
8 tween the employer and employee before
9 the performance of the work involved if
10 such agreement or understanding was en-
11 tered into knowingly and voluntarily by
12 such employee and was not a condition of
13 employment.

14 “(B) If such employee has affirmed, in a
15 written or otherwise verifiable statement that is
16 made, kept, and preserved in accordance with
17 section 11(c), that the employee has chosen to
18 receive compensatory time off in lieu of mone-
19 tary overtime compensation.

20 “(C) If the employee has not accrued com-
21 pensatory time off in excess of the limit applica-
22 ble to the employee prescribed by paragraph
23 (3).

24 “(3) HOUR LIMIT.—

1 “(A) MAXIMUM HOURS.—An employee
2 may accrue not more than 240 hours of com-
3 pensatory time off.

4 “(B) COMPENSATION DATE.—Not later
5 than January 31 of each calendar year, the em-
6 ployee’s employer shall provide monetary com-
7 pensation for any unused compensatory time off
8 accrued during the preceding calendar year that
9 was not used prior to December 31 of the pre-
10 ceding calendar year at the rate prescribed by
11 paragraph (6). An employer may designate and
12 communicate to the employees of the employer
13 a 12-month period other than the calendar
14 year, in which case such compensation shall be
15 provided not later than 31 days after the end
16 of such 12-month period.

17 “(C) EXCESS OF 80 HOURS.—The em-
18 ployer may provide monetary compensation for
19 an employee’s unused compensatory time off in
20 excess of 80 hours at any time after giving the
21 employee at least 30 days’ notice. Such com-
22 pensation shall be provided at the rate pre-
23 scribed by paragraph (6).

24 “(D) POLICY.—An employer that has
25 adopted a policy offering compensatory time off

1 to employees may discontinue such policy upon
2 giving employees 30 days' notice.

3 “(E) WRITTEN REQUEST.—An employee
4 may withdraw an agreement or understanding
5 described in paragraph (2)(A)(ii) at any time.
6 An employee may also request in writing that
7 monetary compensation be provided, at any
8 time, for all compensatory time off accrued that
9 has not yet been used. Within 30 days after re-
10 ceiving the written request, the employer shall
11 provide the employee the monetary compensa-
12 tion due in accordance with paragraph (6).

13 “(4) PROHIBITION OF COERCION.—

14 “(A) IN GENERAL.—An employer that pro-
15 vides compensatory time off under paragraph
16 (1) to employees shall not directly or indirectly
17 intimidate, threaten, or coerce, or attempt to
18 intimidate, threaten, or coerce, any employee
19 for the purpose of—

20 “(i) interfering with the rights of the
21 employee under this subsection to request
22 or not request compensatory time off in
23 lieu of payment of monetary overtime com-
24 pensation for overtime hours; or

1 “(ii) requiring the employee to use
2 such compensatory time off.

3 “(B) DEFINITION.—As used in subpara-
4 graph (A), the term ‘intimidate, threaten, or co-
5 erce’ has the meaning given the term in section
6 13A(d)(3)(B).”.

7 (2) REMEDIES AND SANCTIONS.—Section 16 of
8 the Fair Labor Standards Act of 1938 (29 U.S.C.
9 216) is amended—

10 (A) in subsection (b), by striking “(b) Any
11 employer” and inserting “(b) Except as pro-
12 vided in subsection (f), any employer”; and

13 (B) by adding at the end the following:

14 “(f)(1) An employer that violates section 7(r)(4) shall
15 be liable to the employee affected in an amount equal to—

16 “(A) the product of—

17 “(i) the rate of compensation (determined
18 in accordance with section 7(r)(6)(A)); and

19 “(ii)(I) the number of hours of compen-
20 satory time off involved in the violation that
21 was initially accrued by the employee; minus

22 “(II) the number of such hours used by
23 the employee; and

24 “(B) as liquidated damages, the product of—

25 “(i) such rate of compensation; and

1 “(ii) the number of hours of compensatory
2 time off involved in the violation that was ini-
3 tially accrued by the employee.

4 “(2) The employer shall be subject to such liability
5 in addition to any other remedy available for such violation
6 under this section or section 17, including a criminal pen-
7 alty under subsection (a) and a civil penalty under sub-
8 section (e).”.

9 (3) CALCULATIONS AND SPECIAL RULES.—Sec-
10 tion 7(r) of the Fair Labor Standards Act of 1938
11 (29 U.S.C. 207(r)), as added by paragraph (1), is
12 amended by adding at the end the following:

13 “(5) TERMINATION OF EMPLOYMENT.—An em-
14 ployee who has accrued compensatory time off au-
15 thorized to be provided under paragraph (1) shall,
16 upon the voluntary or involuntary termination of
17 employment, be paid for the unused compensatory
18 time off in accordance with paragraph (6).

19 “(6) RATE OF COMPENSATION FOR COMPEN-
20 SATORY TIME OFF.—

21 “(A) GENERAL RULE.—If compensation is
22 to be paid to an employee for accrued compen-
23 satory time off, such compensation shall be paid
24 at a rate of compensation not less than—

1 “(i) the regular rate received by such
 2 employee when the compensatory time off
 3 was earned; or

4 “(ii) the final regular rate received by
 5 such employee,
 6 whichever is higher.

7 “(B) CONSIDERATION OF PAYMENT.—Any
 8 payment owed to an employee under this sub-
 9 section for unused compensatory time off shall
 10 be considered unpaid monetary overtime com-
 11 pensation.

12 “(7) USE OF TIME.—An employee—

13 “(A) who has accrued compensatory time
 14 off authorized to be provided under paragraph
 15 (1); and

16 “(B) who has requested the use of such
 17 compensatory time off,

18 shall be permitted by the employer of the employee
 19 to use such time within a reasonable period after
 20 making the request if the use of the compensatory
 21 time off does not unduly disrupt the operations of
 22 the employer.

23 “(8) DEFINITIONS.—The terms ‘monetary over-
 24 time compensation’ and ‘compensatory time off’
 25 shall have the meanings given the terms ‘overtime

1 compensation’ and ‘compensatory time’, respectively,
 2 by subsection (o)(7).”.

3 (4) NOTICE TO EMPLOYEES.—Not later than
 4 30 days after the date of the enactment of this Act,
 5 the Secretary of Labor shall revise the materials the
 6 Secretary provides, under regulations published at
 7 29 C.F.R. 516.4, to employers for purposes of a no-
 8 tice explaining the Fair Labor Standards Act of
 9 1938 to employees so that such notice reflects the
 10 amendments made to such Act by this subsection.

11 (b) BIWEEKLY WORK PROGRAMS AND FLEXIBLE
 12 CREDIT HOUR PROGRAMS.—

13 (1) IN GENERAL.—The Fair Labor Standards
 14 Act of 1938 is amended by inserting after section 13
 15 (29 U.S.C. 213) the following new section:

16 **“SEC. 13A. BIWEEKLY WORK PROGRAMS AND FLEXIBLE**
 17 **CREDIT HOUR PROGRAMS.**

18 “(a) PURPOSES.—The purposes of this section are—

19 “(1) to assist working people in the United
 20 States;

21 “(2) to balance the demands of workplaces with
 22 the needs of families;

23 “(3) to provide such assistance and balance
 24 such demands by allowing employers to establish bi-
 25 weekly work programs and flexible credit hour pro-

1 grams, in which employees may voluntarily partici-
2 pate; and

3 “(4) to give private sector employees the same
4 benefits of biweekly work schedules and flexible cred-
5 it hours as have been enjoyed by Federal Govern-
6 ment employees since 1978.

7 “(b) BIWEEKLY WORK PROGRAMS.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of law, an employer may establish biweekly
10 work programs that allow the use of a biweekly work
11 schedule—

12 “(A) that consists of a basic work require-
13 ment of not more than 80 hours, over a 2-week
14 period; and

15 “(B) in which more than 40 hours of the
16 work requirement may occur in a week of the
17 period.

18 “(2) COMPUTATION OF OVERTIME.—In the case
19 of an employee participating in such a biweekly work
20 program, all hours worked in excess of such a bi-
21 weekly work schedule or in excess of 80 hours in the
22 2-week period, that are requested in advance by an
23 employer, shall be overtime hours.

24 “(3) OVERTIME COMPENSATION PROVISION.—

25 The employee shall be compensated for each such

1 overtime hour at a rate not less than one and one-
 2 half times the regular rate at which the employee is
 3 employed, in accordance with section 7(a)(1), or re-
 4 ceive compensatory time off in accordance with sec-
 5 tion 7(r) for each such overtime hour.

6 “(4) COMPENSATION FOR HOURS IN SCHED-
 7 ULE.—Notwithstanding section 7 or any other provi-
 8 sion of law that relates to premium pay for overtime
 9 work, the employee shall be compensated for each
 10 hour in such a biweekly work schedule at a rate not
 11 less than the regular rate at which the employee is
 12 employed.

13 “(c) FLEXIBLE CREDIT HOUR PROGRAMS.—

14 “(1) IN GENERAL.—Notwithstanding any other
 15 provision of law, an employer may establish flexible
 16 credit hour programs, under which, at the election of
 17 an employee, the employer and the employee jointly
 18 designate hours for the employee to work that are
 19 in excess of the basic work requirement of the em-
 20 ployee so that the employee can accumulate flexible
 21 credit hours to reduce the hours worked in a week
 22 or a day subsequent to the day on which the flexible
 23 credit hours are worked.

24 “(2) COMPUTATION OF OVERTIME.—In the case
 25 of an employee participating in such a flexible credit

1 hour program, all hours worked in excess of 40
 2 hours in a week that are requested in advance by an
 3 employer, other than flexible credit hours, shall be
 4 overtime hours.

5 “(3) OVERTIME COMPENSATION PROVISION.—

6 The employee shall be compensated for each such
 7 overtime hour at a rate not less than one and one-
 8 half times the regular rate at which the employee is
 9 employed, in accordance with section 7(a)(1), or re-
 10 ceive compensatory time off in accordance with sec-
 11 tion 7(r) for each such overtime hour.

12 “(4) COMPENSATION FOR FLEXIBLE CREDIT
 13 HOURS.—Notwithstanding section 7 or any other
 14 provision of law that relates to premium pay for
 15 overtime work, an employee shall be compensated for
 16 each flexible credit hour at a rate not less than the
 17 regular rate at which the employee is employed.

18 “(5) ACCUMULATION AND COMPENSATION.—

19 “(A) ACCUMULATION OF FLEXIBLE CRED-
 20 IT HOURS.—An employee who is participating
 21 in such a flexible credit hour program can accu-
 22 mulate not more than 50 flexible credit hours.

23 “(B) COMPENSATION FOR FLEXIBLE
 24 CREDIT HOURS OF EMPLOYEES NO LONGER
 25 SUBJECT TO PROGRAM.—Any employee who

1 was participating in such a flexible credit hour
2 program and who is no longer subject to such
3 a program shall be paid at a rate not less than
4 the regular rate at which the employee is em-
5 ployed on the date the employee receives such
6 payment, for not more than 50 flexible credit
7 hours accumulated by such employee.

8 “(C) COMPENSATION FOR ANNUALLY AC-
9 CUMULATED FLEXIBLE CREDIT HOURS.—

10 “(i) IN GENERAL.—Not later than
11 January 31 of each calendar year, the em-
12 ployer of an employee who is participating
13 in such a flexible credit hour program shall
14 provide monetary compensation for any
15 flexible credit hours accumulated as de-
16 scribed in subparagraph (A) during the
17 preceding calendar year that were not used
18 prior to December 31 of the preceding cal-
19 endar year at a rate not less than the reg-
20 ular rate at which the employee is em-
21 ployed on the date the employee receives
22 such payment.

23 “(ii) DIFFERENT 12-MONTH PE-
24 RIOD.—An employer may designate and
25 communicate to the employees of the em-

1 ployer a 12-month period other than the
2 calendar year, in which case such com-
3 pensation shall be provided not later than
4 31 days after the end of such 12-month
5 period.

6 “(d) PARTICIPATION.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), no employee may be required to partici-
9 pate in a program described in this section. Partici-
10 pation in a program described in this section may
11 not be a condition of employment.

12 “(2) COLLECTIVE BARGAINING AGREEMENT.—

13 In a case in which a valid collective bargaining
14 agreement exists, an employee may only be required
15 to participate in such a program in accordance with
16 the agreement.

17 “(3) PROHIBITION OF COERCION.—

18 “(A) IN GENERAL.—An employer may not
19 directly or indirectly intimidate, threaten, or co-
20 erce, or attempt to intimidate, threaten, or co-
21 erce, any employee for the purpose of interfer-
22 ing with the rights of such employee under this
23 section to elect or not to elect to work a bi-
24 weekly work schedule, to elect or not to elect to
25 participate in a flexible credit hour program, or

1 to elect or not to elect to work flexible credit
 2 hours (including working flexible credit hours in
 3 lieu of overtime hours).

4 “(B) DEFINITION.—As used in subpara-
 5 graph (A), the term ‘intimidate, threaten, or co-
 6 erce’ includes promising to confer or conferring
 7 any benefit (such as appointment, promotion, or
 8 compensation) or effecting or threatening to ef-
 9 fect any reprisal (such as deprivation of ap-
 10 pointment, promotion, or compensation).

11 “(e) APPLICATION OF PROGRAMS IN THE CASE OF
 12 COLLECTIVE BARGAINING AGREEMENTS.—

13 “(1) APPLICABLE REQUIREMENTS.—In the case
 14 of employees in a unit represented by an exclusive
 15 representative, any biweekly work program or flexi-
 16 ble credit hour program described in subsection (b)
 17 or (c), respectively, and the establishment and termi-
 18 nation of any such program, shall be subject to the
 19 provisions of this section and the terms of a collec-
 20 tive bargaining agreement between the employer and
 21 the exclusive representative.

22 “(2) INCLUSION OF EMPLOYEES.—Employees
 23 within a unit represented by an exclusive representa-
 24 tive shall not be included within any program under
 25 this section except to the extent expressly provided

1 under a collective bargaining agreement between the
 2 employer and the exclusive representative.

3 “(3) COLLECTIVE BARGAINING AGREEMENTS.—
 4 Nothing in this section shall be construed to dimin-
 5 ish the obligation of an employer to comply with any
 6 collective bargaining agreement or any employment
 7 benefits program or plan that provides lesser or
 8 greater rights to employees than the benefits estab-
 9 lished under this section.

10 “(f) DEFINITIONS.—As used in this section:

11 “(1) BASIC WORK REQUIREMENT.—The term
 12 ‘basic work requirement’ means the number of
 13 hours, excluding overtime hours, that an employee is
 14 required to work or is required to account for by
 15 leave or otherwise.

16 “(2) COLLECTIVE BARGAINING.—The term ‘col-
 17 lective bargaining’ means the performance of the
 18 mutual obligation of the representative of an em-
 19 ployer and the exclusive representative of employees
 20 in an appropriate unit to meet at reasonable times
 21 and to consult and bargain in a good-faith effort to
 22 reach agreement with respect to the conditions of
 23 employment affecting such employees and to exe-
 24 cute, if requested by either party, a written docu-
 25 ment incorporating any collective bargaining agree-

1 ment reached, but the obligation referred to in this
 2 paragraph does not compel either party to agree to
 3 a proposal or to make a concession.

4 “(3) COLLECTIVE BARGAINING AGREEMENT.—
 5 The term ‘collective bargaining agreement’ means an
 6 agreement entered into as a result of collective bar-
 7 gaining.

8 “(4) ELECTION.—The term ‘at the election of’,
 9 used with respect to an employee, means at the ini-
 10 tiative of, and at the request of, the employee.

11 “(5) EMPLOYEE.—The term ‘employee’ means
 12 an employee, as defined in section 3, except that the
 13 term shall not include an employee, as defined in
 14 section 6121(2) of title 5, United States Code.

15 “(6) EMPLOYER.—The term ‘employer’ means
 16 an employer, as defined in section 3, except that the
 17 term shall not include any person acting in relation
 18 to an employee, as defined in section 6121(2) of title
 19 5, United States Code.

20 “(7) EXCLUSIVE REPRESENTATIVE.—The term
 21 ‘exclusive representative’ means any labor organiza-
 22 tion that—

23 “(A) is certified as the exclusive represent-
 24 ative of employees in an appropriate unit pursu-
 25 ant to Federal law; or

1 “(B) was recognized by an employer imme-
 2 diately before the date of enactment of this sec-
 3 tion as the exclusive representative of employees
 4 in an appropriate unit—

5 “(i) on the basis of an election; or

6 “(ii) on any basis other than an elec-
 7 tion;

8 and continues to be so recognized.

9 “(8) FLEXIBLE CREDIT HOURS.—The term
 10 ‘flexible credit hours’ means any hours, within a
 11 flexible credit hour program established under sub-
 12 section (c), that are in excess of the basic work re-
 13 quirement of an employee and that, at the election
 14 of the employee, the employer and the employee
 15 jointly designate for the employee to work so as to
 16 reduce the hours worked in a week or a day subse-
 17 quent to the day on which the flexible credit hours
 18 are worked.

19 “(9) OVERTIME HOURS.—The term ‘overtime
 20 hours’—

21 “(A) when used with respect to biweekly
 22 work programs under subsection (b), means all
 23 hours worked in excess of the biweekly work
 24 schedule involved or in excess of 80 hours in

the 2-week period involved, that are requested in advance by an employer.

“(B) when used with respect to flexible credit hour programs under subsection (c), means all hours worked in excess of 40 hours in a week that are requested in advance by an employer, but does not include flexible credit hours.

“(10) REGULAR RATE.—The term ‘regular rate’ has the meaning given the term in section 7(e).”.

(2) PROHIBITIONS.—

(A) PURPOSES.—The purposes of this paragraph are to make violations of the bi-weekly work program and flexible credit hour program provisions by employers unlawful under the Fair Labor Standards Act of 1938, and to provide for appropriate remedies for such violations, including, as appropriate, fines, imprisonment, injunctive relief, and appropriate legal or equitable relief, including liquidated damages.

(B) REMEDIES AND SANCTIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended by in-

1 serting before the semicolon the following: “, or
2 to violate any of the provisions of section 13A”.

3 (c) LIMITATIONS ON SALARY PRACTICES RELATING
4 TO EXEMPT EMPLOYEES.—Section 13 of the Fair Labor
5 Standards Act of 1938 (29 U.S.C. 213) is amended by
6 adding at the end the following:

7 “(m)(1)(A) In the case of a determination of whether
8 an employee is an exempt employee described in sub-
9 section (a)(1), the fact that the employee is subject to de-
10 ductions in compensation for—

11 “(i) absences of the employee from employment
12 of less than a full workday; or

13 “(ii) absences of the employee from employment
14 of less than a full pay period,

15 shall not be considered in making such determination.

16 “(B) In the case of a determination described in sub-
17 paragraph (A), an actual reduction in compensation of the
18 employee may be considered in making the determination.

19 “(C) For the purposes of this paragraph, the term
20 ‘actual reduction in compensation’ does not include any
21 reduction in accrued paid leave, or any other practice, that
22 does not reduce the amount of compensation an employee
23 receives for a pay period.

24 “(2) The payment of overtime compensation or other
25 additions to the compensation of an employee employed

1 on a salary based on hours worked shall not be considered
2 in determining if the employee is an exempt employee de-
3 scribed in subsection (a)(1).”.

○